

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|---------------------------------------|---|-------------------|
| AN EXAMINATION BY THE PUBLIC SERVICE |) | |
| COMMISSION OF THE APPLICATION OF THE |) | |
| FUEL ADJUSTMENT CLAUSE OF KENTUCKY |) | CASE NO. 92-493-B |
| UTILITIES COMPANY FROM MAY 1, 1993 TO |) | |
| OCTOBER 31, 1993 |) | |

O R D E R

This matter arising upon petition of Kentucky Utilities Company ("KU"), filed February 14, 1994, pursuant to 807 KAR 5:001, Section 7, for confidential protection of its bid tabulation sheets filed in response to the Commission's December 27, 1993 Order on the grounds that protection of the information is essential for KU to have a fair and competitive bid process that produces the lowest reasonable cost of fuel, that the information constitutes preliminary drafts and notes, and that the information contains opinions protected from disclosure, and it appearing to this Commission as follows:

By Order of December 27, 1993, KU was directed to furnish certain information to the Commission relating to the application of its fuel adjustment clause. Such clauses are authorized by 807 KAR 5:056 to permit electric utilities to adjust their tariff rates in accordance with a fixed formula to reflect fluctuations in the utilities' cost of fossil fuels used to generate electricity. The tabulation sheet used by KU to evaluate each bid from its coal vendors was included with the information supplied in response to

the data request. In its petition, KU maintains that the information sought to be protected is exempt from public disclosure under the provisions of KRS 61.878 (c), (h), and (i).

KRS 61.872(1) requires information filed with the Commission to be available for public information unless specifically exempted by statute. The exemptions from this requirement are provided in KRS 61.878(1). That section of the statute exempts 11 categories of information. One category exempted by paragraph (c) is commercial information confidentially disclosed to the Commission. To qualify for that exemption, it must be established that disclosure of the information is likely to cause substantial harm to the party from whom the information was obtained. To satisfy this test, the party claiming confidentiality must demonstrate actual competition and a likelihood of substantial competitive injury if the information is disclosed. Competitive injury occurs when disclosure of the information gives competitors an unfair business advantage.

KU maintains that protection of the bid tabulation sheets is essential for KU to have a fair and competitive bid process that produces the lowest reasonable cost of fuel. The company argues that placing this information in the public record will allow prospective coal suppliers to manipulate the KU bid process to their advantage and to the detriment of KU customers. This argument ignores the dynamics of the bidding process.

Since KU purchases its coal in a competitive market, it is more logical to assume that prospective suppliers knowing they face

competition from each other will continue to offer coal at the best terms they can afford in order to obtain the contract. Therefore, the information is not entitled to protection on those grounds.

KU also contends that the information sought to be protected is exempt from disclosure as a preliminary draft, note, or correspondence under KRS 61.878(1)(h) and as a preliminary opinion exempt under KRS 61.878(1)(i). Both of these sections, however, are intended to protect the decision making process of public agencies and do not extend to information filed with those agencies. Therefore, the information is not entitled to confidential protection on those grounds.

Finally, some of the information sought to be protected can be derived from coal purchase contracts executed by KU. These contracts are required to be filed with the Commission by Section 1(7) of 807 KAR 5:056 and must be available for public inspection under Section 1(10) of the same regulation.

This Commission being otherwise sufficiently advised,

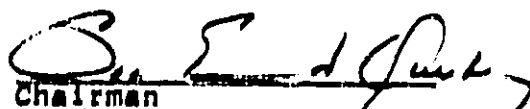
IT IS ORDERED that:

1. The petition to protect as confidential the bid tabulation sheets filed by KU be and is hereby denied.

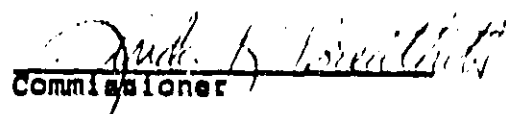
2. The information sought to be protected shall be held and retained by this Commission as confidential and shall not be open for public inspection for a period of 20 days from the date of this Order, at the expiration of which it shall be placed in the public record without further Orders herein.

Done at Frankfort, Kentucky, this 24th day of February, 1994.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director